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No. 81

In the Supreme Court of the United States

OCTOBER TERM, 1930

HENRY CHOTEAU, PETITIONER

v.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 8–10) is reported in 14 B. T. A. 1254. The opinion of the Circuit Court of Appeals (R. 26–33) is reported in 38 F. (2d) 976.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 33) was entered on February 10, 1930. Petition for certiorari was docketed in this Court on April 14, 1930, and was granted May 19, 1930. (R. 35.)

QUESTION PRESENTED

Whether the income of a member of the Osage Tribe of Indians, who has received a certificate of competency, is taxable under the provisions of the Revenue Act of 1918, when such income consists of the *pro rata* share, consisting in part of his share as a member and in part of an inherited interest, of such Indian of the income of the Osage Tribe received during the years 1918, 1919, and 1920 from oil and gas mineral leases made by said tribe with the approval of the Secretary of the Interior under the Act of June 28, 1906 (c. 3572, 34 Stat. 539).

STATUTES INVOLVED

The pertinent provisions of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1062, 1065, are as follows:

> SEC. 210. That * * * there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax * * *.
>
> SEC. 211. (a) That * * * there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax * * *.
>
> SEC. 213. That for the purposes of this title * * * the term "gross income"—
>
> (a) Includes gains, profits, and income derived from * * * sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; * * * or gains or profits and income derived from any source whatever. * * *.

The relevant provisions of the Act of June 28, 1906, c. 3572, 34 Stat. 539, which was the original allotment Act; the Act of April 18, 1912, c. 83, 37 Stat. 86, which amended the allotment Act in some respects and authorized the distribution of a portion of the tribal trust funds; the Act of March 3, 1921, c. 120, 41 Stat. 1249, which extended the period of reservation of the mineral rights in the lands previously allotted, and made certain other amendments to the previous Acts; the Act of February 27, 1925, c. 359, 43 Stat. 1008, amendatory of the prior Acts; and the Act of March 2, 1929, c. 493, 45 Stat. 1478, which also amended and amplified the preceding Acts and again extended the period of reservation of mineral rights, will be found in Appendices B, C, D, E, and F, pp. 31–53.

STATEMENT

The facts stipulated by the parties and found by the Board of Tax Appeals are, in substance, as follows (R. 9–10):

During the years 1918, 1919, and 1920 the petitioner was duly enrolled as a member of the Osage Tribe of Indians, under the Act of Congress of June 28, 1906, c. 3572, 34 Stat. 539, *infra*, p. 31. He held a certificate of competency as provided for in that Act, issued on March 5, 1910. He was the owner of one share or allotment as a member and of a half share as heir of a deceased member.

During the years in question he received certain income from his own share and from the inherited half share, which was paid to him through the Osage Indian Agency at Pawhuska, Oklahoma.

All of the income received by petitioner during the years in question was his *pro rata* part of the income of the Osage Tribe of Indians which was received during those years from oil and gas mineral leases made by the tribe with the approval of the Secretary of the Interior under the Act of Congress of June 28, 1906. The oil and gas mineral leases were upon a part of the lands originally bought for the Osage Tribe of Indians by the United States with money belonging to the tribe and held in trust for it by the United States, the lands having been purchased from the Cherokee Tribe of Indians and deeded to the United States, to be held in trust by it for the Osage Tribe of Indians.

For the years 1918, 1919, and 1920, petitioner paid as income taxes $122.40, $57.55, and $551.21, respectively. The Commissioner of Internal Revenue sent a deficiency letter finding deficiencies in income taxes against the petitioner for those years in the respective amounts of $40.64, $68.98, and $248.39. (R. 4–5.) Before the Board of Tax Appeals the petitioner contended that all of the income received by him during the years in question was exempt from tax and that, accordingly,

he owed no deficiencies but was entitled to a refund of the amounts which he had theretofore paid. (R. 2-3.) The Board held that petitioner's income received during those years was not exempt from tax and accordingly entered judgment for the respondent (R. 11), which was affirmed by the Circuit Court of Appeals (R. 33).

SUMMARY OF ARGUMENT

There is no express exemption covering either the income here sought to be taxed or extending an exempt status to the petitioner as to such income. Sections 210 and 211 (a) of the Revenue Act of 1918 subject the income of "every individual" to the tax, and under Section 213 (a) income "from any source whatever" is included. It was the intention of Congress to extend the income tax to all species of income, and in the absence of an express exemption the freedom of the income in question from taxation must rest upon an implied exemption arising either from the status of the petitioner or the nature of the income itself.

1. The petitioner was not exempt because as to the income sought to be taxed he was no longer a ward of the Government. The policy of the Government toward the Indian has been one of gradual emancipation to prepare him for complete independence by educating him in self-control and committing to him gradually the care of his property, and as a part of such education to impose upon him the duties and responsibilities as well as the

privileges of a property owner, including the duty to pay taxes. It would be inconsistent with this policy of educating the Indian in responsibility to hold him immune from taxation on property as to which he had been emancipated. The Act of June 28, 1906, c. 3572, 34 Stat. 539 (Appendix B, pp. 31–37), was passed pursuant to this policy of gradual emancipation. Under that Act petitioner's share of royalties received from oil leases on tribal lands was distributed quarterly to him with no restrictions upon the use of the money so distributed. No control over the distributed funds was reserved by the Government. The Act was a legislative judgment that so far as the distributed royalties were concerned petitioner was relieved of such guardianship, was fully emancipated, and was not entitled to exemption as a ward of the Government. The declaration of the Secretary of the Interior that he was fully competent and capable of managing his own affairs strengthens this view.

2. The only ground upon which an implied exemption of the income can rest is that either the income itself or the source from which it was derived constituted an instrumentality of the United States used in fulfilling its duty to the Indian. Such money upon distribution to petitioner ceased to be a Federal instrumentality, was no longer in the hands of the Federal Government, the Government had no further control over it, and the rea-

son for the rule of exemption of instrumentalities no longer existed. This Court has rejected the contention that income from leases of mineral rights held in trust for the tribe was exempt because of the exempt status of its source, and held that income from such source was subject to Federal taxation even though there might be some economic effect upon the Indians themselves. In this case still less reason existed for the implied exemption. The imposition of the tax here involved could have no economic effect on any other Indian nor hinder the Federal Government in any way in its use of the instrumentality from which the income was derived.

What Government instrumentalities will be held to be exempt depends upon the purpose and character of the legislation creating them. Petitioner was fully emancipated so far as this income was concerned, and immediately upon the distribution of the money it ceased to be an instrumentality of the Federal Government. Thereafter it was "education through the responsibility for spending" which constituted the instrumentality employed by the Government in fitting petitioner to take his full part as a citizen of the United States. To hold the income immune from taxation would be inconsistent with the very purpose of Congress in making the distribution.

3. The Treasury Department has consistently and for years asserted the income-tax liability of

Osage Indians as to income received from oil royalties, and it is reasonable to suppose that if this consistent administrative interpretation was contrary to the intention of Congress this practice of the Department would have been specifically corrected in some of the later revisions of the income tax laws.

ARGUMENT

PRELIMINARY STATEMENT

At all times involved in this case petitioner, an Osage Indian, was enrolled as a member of the tribe. He held a certificate of competency issued March 5, 1910, as provided for in Section 2 of the Act of 1906, p. 32, *infra*. During the years 1918, 1919, and 1920, petitioner received as a member his prc rata share, and as heir of a deceased member a half share, of the income from leases on the oil, gas, and other minerals reserved to the tribe under the Act, which were paid to him under Section 4, Second, thereof. (R. 9–10.)

It is this income which the Government is seeking to tax. Petitioner's right to receive the income arose thus: The Tribe originally owned lands in the State of Kansas. The Kansas lands were sold and other lands purchased for the Indians in what is now the State of Oklahoma, which were allotted in 1906 to the individual members of the tribe, with certain exceptions not material here. The tribe also owned a fund, derived from the sale of lands, etc., which was held in trust by the United States and

the interest from which was paid to the members of the tribe. Under Section 2, Seventh, and Section 3 of the Act of 1906, the oil, gas, coal, and other minerals were not allotted, but were reserved to the use of the tribe for a period of 25 years, at the end of which time such mineral rights were to go to the individual owners of the surface rights unless otherwise provided by Congress. This twenty-five year period was subsequently extended by the Act of 1921 and again by the Act of 1929. Under Section 3 of the Act of 1906 mineral leases were to be made by the tribe through its tribal council with the approval of the Secretary of the Interior and under such rules and regulations as he might prescribe. The President of the United States fixed the royalties to be paid. Under Section 4 the royalties received by the Indians from these mineral leases were placed in the Treasury of the United States, to the credit of the individual enrolled members of the tribe, and distributed to them in quarterly payments without restriction as to amount or as to use.[1]

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[1] This Court has frequently had occasion to consider questions concerning the Osage Indians. See *Thomas* v. *Gay*, 169 U. S. 264; *Levindale Lead Co.* v. *Coleman*, 241 U. S. 432; *McCurdy* v. *United States*, 246 U. S. 263; *United States* v. *Osage County*, 251 U. S. 128; *La Motte* v. *United States*, 254 U. S. 570; *Work* v. *Mosier*, 261 U. S. 352; *Work* v. *Lynn*, 266 U. S. 161; *United States* v. *Ramsey*, 271 U. S. 467.

During the taxable years involved the Revenue Act of 1918, c. 18, 40 Stat. 1057, was in effect. There is nothing in that Act or in any other Act of Congress exempting the income from the royalties here sought to be taxed or extending an exempt status to Indians. The language of the Revenue Act of 1918 is all-inclusive. Under Sections 210 and 211 (a) the net income of "every individual" is subject to tax and under Section 213 (a) income from any source whatever is included. It was the intention of Congress to extend the income tax not only to all species of income, but to all individuals unless expressly exempted. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232; *Irwin* v. *Gavit*, 268 U. S. 161; *Willcuts* v. *Bunn*, No. 22, October Term, 1930, decided January 5, 1931. In the absence of an express exemption of either the income or the individual, therefore, petitioner's freedom from taxation must rest upon an implied exemption arising either from his status as an Indian or from the nature of the income itself. Such exemptions are never lightly to be inferred. See *Heiner* v. *Colonial Trust Co.*, *supra*, and cases cited therein.

I

AS TO THE INCOME HERE SOUGHT TO BE TAXED PETITIONER IS NOT EXEMPT BECAUSE OF HIS STATUS AS AN INDIAN

There can be no question that the royalties from mining leases received by petitioner constitute in-

come.[2] The only question is whether or not such income is exempt from taxation.

As to the income here sought to be taxed, the petitioner was fully emancipated, as will be shown, and hence is outside the class of unemancipated Indians dealt with in opinions of the Attorney General holding their income not subject to tax.[3]

Speaking generally, the policy of the Government toward the Indian has been one of gradual emancipation from the status of ward. It has sought to prepare him for complete independence by educating him in self-control and committing to him gradually the care of his property. As a part of such education there have been imposed upon him the duties and responsibilities as well as the privileges of a property owner, including the duty to pay taxes. *Levindale Lead Co.* v. *Coleman*, 241 U. S. 432, 437; *United States* v. *Nice*, 241 U. S. 591, 598; *United States* v. *Waller*, 243 U. S. 452, 459; *McCurdy* v. *United States*, 246 U. S. 263, 269; *La Motte* v. *United States*, 254 U. S. 570, 575; *Shaw* v. *Oil Corp'n*, 276 U. S. 575, 579. In the case last cited

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[2] That the payments are not a gift from the Government as contended by petitioner (Br. 57–59) is plain. While Congress might withhold or distribute the tribal funds and property as it thought best in the exercise of its duty to the Indians, nevertheless the petitioner had an equitable interest therein and upon the distribution thereof he received not a gratuity but a share of that which was his own. *Choate* v. *Trapp*, 224 U. S. 665; *Quick Bear* v. *Leupp*, 210 U. S. 50.

[3] Op. Atty. Gen. 275; 34 Op. Atty. Gen. 302; 34 Op. Atty. Gen. 439; 35 Op. Atty. Gen. 1; 35 Op. Atty. Gen. 107.

this Court pointed out that it would be inconsistent with the policy of educating Indians in responsibility to hold them immune from taxation on property as to which they have been emancipated. As a general rule noncompetent Indians are restricted not only in the control over lands allotted to them but also in the use and control of moneys received by them. See Appendix G, pp. 54–62.

The preparation of the Osage Indians for their emancipation has continued through more than a century. Since the year 1825 various treaties and Acts of Congress have provided for schools, artisans, livestock, agricultural implements, etc. The Act of 1906 contained the first provision for definite partial emancipation. A narrative statement of its provisions and of those of subsequent Acts appears in Appendix A, pp. 25–31.

While under the Act of 1906 the homestead allotments of all members were inalienable and nontaxable for a stated period, and the surplus lands of those not holding certificates of competency were inalienable for 25 years and nontaxable for three years, the surplus lands of those holding certificates of competency became immediately alienable and immediately taxable, and all members, whether holding certificates of competency or not (except minors in certain cases), were credited with and paid quarterly their *pro rata* shares of all royalties received from mineral leases on tribal lands without any restriction whatever upon the control

and use of the moneys so received. The unrestricted character of the payments is confirmed by Section 4 of the Act of 1925, p. 48, *infra*, which, while authorizing the Secretary of the Interior to revoke a certificate of competency issued to a member of more than one-half Indian blood who is squandering or misusing his funds, provides that all of the Indian's just indebtedness existing at the time of revocation shall be recognized and paid out of his income. Further proof of the unrestricted character of royalty payments here involved is found in Section 4 of the Act of 1921, p. 42, *infra*, which provides that while members holding certificates of competency shall receive their *pro rata* shares of royalties other members shall be paid not more than $1,000 per quarter. See *La Motte* v. *United States*, 254 U. S. 570, 580.

Petitioner was as fully emancipated with respect to the quarterly payments as he was, by virtue of his certificate of competency, with respect to the use and sale of his surplus lands. In this situation we believe that the principle of *United States* v. *Waller, supra*, applies. There the United States brought a suit on behalf of two Chippewa Indian allottees of mixed blood to cancel and annul a deed alleged to have been procured from them by fraud. Under the Clapp amendment to the Allotment Act affecting these Indians the restrictions as to the alienation of allotments held by mixed-blood Indians had been removed. This Court held that the

Indians had thereby been fully emancipated as to the allotments in question and that the United States could not maintain a suit as their guardian. The Court said (p. 459):

> The tribal Indians are wards of the Government, and as such under its guardianship. It rests with Congress to determine the time and extent of emancipation. Conferring citizenship is not inconsistent with the continuation of such guardianship, for it has been held that even after the Indians have been made citizens the relation of guardian and ward for some purposes may continue. On the other hand, Congress may relieve the Indians from such guardianship and control, in whole or in part, and may, if it sees fit, clothe them with full rights and responsibilities concerning their property or give to them a partial emancipation if it thinks that course better for their protection.

And again (pp. 462–463):

> The act thus evidences a legislative judgment that adult mixed-blood Indians are, in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands. This may be a mistake of judgment as to some cases, and if the allegations of the bill set forth in the certificate in this case are true, it is quite evident that the Indians here involved were incapable of making an intelligent disposition of their lands. But Congress

> dealt with general conditions, and with these classes of Indians as a whole, and with authority over the subject has given to adult mixed-blood Indians the full right to dispose of the lands in question. It is not for the courts to question this legislative judgment. * * * In the case now before us, in whatever other respect the Government of the United States may continue to hold these Indians as wards, needing and receiving protection from its authority over their persons and property, as to the lands in question the United States, in the passage of the Clapp Amendment, evidenced its purpose to grant full power and control to the class named. As to them the Government has no further interest in or control over the lands.

The doctrine of partial emancipation applied in the *Waller* case rested upon a statute removing restrictions as to alienation. We contend that the statute authorizing the distribution of this pro rata share of the royalties to the petitioner and giving him unrestricted control over the moneys so received evidences the intent of Congress to emancipate him and disposes of the contention that as to this particular income the petitioner stood in the relation of wardship to the United States.

This principle of partial emancipation has been recognized by this Court in other cases dealing with like quarterly payments to Osage Indians. In *Work* v. *Mosier, supra*, the Secretary of the Interior undertook to limit the amount to be paid

under Section 4 of the Act of 1906 to parental guardians of minor Osage Indians and to exercise control over the expenditure thereof. It was held (pp. 359–361) that no control could be exercised other than that prescribed in the Act of withholding payments in the case of misuse or squandering. After the payments were made they were beyond the control of the Government. In *Work* v. *Lynn*, *supra*, the Secretary of the Interior asserted the right to supervise the expenditure of the $1,000 paid quarterly under the Act of 1921 to the guardian of an Osage Indian. It was held that after payment to the guardian the Government had no further control over the funds (p. 169). Cf. *Goudy* v. *Meath*, 203 U. S. 146; *McCurdy* v. *United States*, *supra*; *La Motte* v. *United States*, *supra*; *United States* v. *Ransom*, 263 U. S. 691.

The doctrine of partial emancipation finds its counterpart in the principle applied in determining what governmental instrumentalities are immune from State taxation. In *Shaw* v. *Oil Corp'n*, 276 U. S. 575, 578, this Court said:

> What governmental instrumentalities will be held free from state taxation, though Congress has not expressly so provided, can not be determined apart from the purpose and character of the legislation creating them.

We believe the principle of that case is that property acquired under a statute designed to educate the Indians in responsibility and independence is

not exempt from taxation unless Congress so declares. The statutes under which petitioner acquired the income in this case evidenced the purpose to free the Indians *pro tanto* from the control of the Government, and it would be wholly inconsistent to hold them immune from a tax applicable to the net income of "every individual."

An additional factor, not present in the cases cited, serves to make clear the intent of Congress to emancipate petitioner as to the income in question—the certificate of competency. The Act of 1906 (p. 32, *infra*) provides that the Secretary of the Interior may, upon request and petition of an adult Indian, if after investigation, consideration, and examination he finds the petitioner "fully competent and capable of transacting his or her own business and caring for his or her own individual affairs," issue a certificate of competency, which was irrevocable until Section 4 of the Act of 1925 (p. 48, *infra*) authorized the revocation for cause of a certificate held by one of more than one-half Indian blood. It is true that the specific authority carried by the certificate is to convey lands other than homestead; but the qualification of the Indian is an indispensable prerequisite, and the certificate in terms declares him to be "fully competent and capable of managing and caring for his individual affairs" (R. 17)—the considered judgment of a responsible officer of the Government, not imposed upon the Indian, but asked for

by him. It would be difficult to produce stronger proof of the fact that the Indian no longer stands in need of the guardianship of the Government, or proof of the intent of Congress to invest him with the individual responsibility of a citizen in all respects so far as the income here involved is concerned.

II

THE INCOME WAS NOT EXEMPT

The only ground upon which an implied exemption of the income as such can rest is that either the income itself or the source from which it was derived constituted an instrumentality of the United States in fulfilling its duty to the Indian. Admittedly the reserved mineral rights and the proceeds derived from the mineral leases, so long as they remain in the hands of the Federal Government in trust for the tribe and undistributed to the individual Indians, are not taxed by the various Revenue Acts. The question on this phase of the case narrows down to whether the exempt status of the source follows the income upon its distribution to the individual Indian. It is the contention of the Government that such money upon distribution ceased to be a Federal instrumentality, was no longer in the hands or under the control of the Government, and that the reason for the rule of exemption of income from such instrumentalities no longer existed.

The general principle that income which is derived from an exempt source is also exempt, recognized in *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 158 U. S. 601, has been applied with some strictness where the question of State taxation was involved. *Gillespie* v. *Oklahoma*, 257 U. S. 501; *United States* v. *Rickert*, 188 U. S. 432; *Shaw* v. *Oil Corp'n, supra.* But while a Federal instrumentality used for the benefit of the Indian is not subject to State taxation in the absence of express consent by Congress, it is nevertheless subject to Federal taxation unless the intent to exclude it is specifically expressed, provided the language of the taxing Act is broad enough to include the subject of the tax, as is the case here. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, 234–235; *Shaw* v. *Oil Corp'n, supra*, p. 579. The language of Sections 210, 211 (a) and 213 (a), Revenue Act of 1918, as already pointed out, is sufficiently comprehensive to include not only the petitioner as an emancipated Indian, but also the income distributed to him which is here sought to be taxed.

The cases of *Gillespie* v. *Oklahoma* and *Heiner* v. *Colonial Trust Co.* are parallel except that in the former it was the State of Oklahoma and in the latter the Federal Government that sought to tax the income of a non-Indian derived from an oil lease upon Osage Indian lands. In the *Gillespie* case this Court held that the State might not tax the income because it was derived from a source

which was exempt as a Federal instrumentality used in the discharge of a fiduciary duty to the Indians. (P. 506.) This argument was urged in the *Colonial Trust Company* case but the Court held that in the face of the comprehensive language of the revenue laws the income was subject to Federal taxation even though there might be some economic effect upon the Indians themselves (pp. 234–235).

In the *Colonial Trust Company* case the fact that the source of the income was a Federal instrumentality did not exempt that income from the Federal tax even though it was admitted that such tax would have a perceptible economic effect on the Indians. In this case still less reason exists for the implied exemption claimed by petitioner. In no way could the imposition of the tax here involved have any economic effect on any other Indian either as an individual or as a member of the Tribe, or hinder in any way the Federal Government in its use of the instrumentality from which the income was derived. Petitioner as an individual is the only one affected. The fact that individual emancipated Indians may ultimately have to pay a tax upon royalties distributed to them can in no way affect the amount of royalties to be paid by lessees. The reason for the exemption of Federal instrumentalities or the income derived therefrom was only remotely present in the *Colonial Trust Company* case, and this Court refused to ap-

ply the rule. In this case the reason for the rule is entirely absent.

Even in the case of State taxation, the exemption of Government instrumentalities depends upon the purpose and character of the legislation creating them. *Shaw* v. *Oil Corp'n, supra,* p. 578. Petitioner was fully emancipated from his status as a ward of the Government so far as the income here involved was concerned, and the money ceased to be an instrumentality of the Federal Government immediately upon its distribution. This Court held in *McCurdy* v. *United States, supra,* that land purchased for a noncompetent Osage Indian out of the principal of trust funds held for him under the Act of 1906, as modified by Section 5 of the Act of 1912, was not exempt as a governmental instrumentality. The Court said (p. 272):

> It is education through the responsibility for spending, not the property purchased with released moneys, which constitutes the instrumentality employed by the Government in fitting the individual Osage Indian to take his full part as a citizen of the United States.

This principle applies with equal force to this case. From the moment of the distribution it was not the money, or its source, but "education through the responsibility for spending" which constituted the instrumentality. To hold the income immune from taxation would be inconsistent

with the very purpose of Congress in making the distribution to petitioner, which was to educate him in responsibility. *Shaw* v. *Oil Corp'n, supra,* pp. 580–581.

In this case the source of the income was the same as in the *Colonial Trust Company* case. There the Court held that the income was not exempt. It is submitted that the principle there applied excludes from this case the source of the income as a basis of exemption.

III

THE TAXABILITY OF THE INCOME IN QUESTION IS IN ACCORD WITH ADMINISTRATIVE INTERPRETATION

The Treasury Department has consistently and for years asserted the income tax liability of Osage Indians as to income received from oil royalties. In connection with this case it has advised that during the years 1917 to 1928, inclusive, the quarterly payments to all Osage Indians on account of oil royalties has amounted to more than $255,000,000; that the depletion properly applicable thereto would amount to approximately $77,000,000; and that the income tax upon such distributed moneys would aggregate more than $6,000,000. The Treasury Department also advises that such income taxes have either been collected from individual Osage Indians for the years since 1916 or collection proceedings have been suspended pending the outcome

of this case, and that at all times the Treasury Department has actively asserted the liability of petitioner and others similarly situated. See Office Decision, Income Tax Unit, No. 1834, published in Internal Revenue Cumulative Bulletin II–2, July–December, 1923, p. 62 (Appendix H, pp. 63–71). The right of the Commissioner of Internal Revenue to collect such tax was sustained by the Board of Tax Appeals. See *Appeal of Leah Brunt, Administratrix, Estate of Theodore S. Brunt*, 5 B. T. A. 134. The petitioner here originally included a portion of these quarterly payments in his return and paid the tax thereon. (R. 9–10.)

As stated by this Court in *Heiner* v. *Colonial Trust Co., supra*, p. 235, if this consistent administrative interpretation "was contrary to the intention of Congress it is reasonable to suppose that this practice of the Department would have been specifically corrected in some of the revisions of the laws taxing income" in the later years.

CONCLUSION

Neither the petitioner nor his income was exempt from the income tax. The decision of the court below should be affirmed.

Respectfully submitted.

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JANUARY, 1931.

APPENDIX A

RÉSUMÉ AND DISCUSSION OF TREATIES AND ACTS OF CONGRESS DEALING WITH THE OSAGE TRIBE OF INDIANS

There are numerous treaties and Acts of Congress dealing with the Osages. The first was the treaty concluded November 10, 1808, and ratified April 28, 1810 (Public Stat. L., Vol. VII, p. 107). Beginning with the Treaty of June 2, 1825, proclaimed December 30, 1825 (Public Stat. L., Vol. VII, p. 240), provision has been made for the furnishing of schools, artisans, livestock, farming utensils, etc. Like provisions occur in subsequent treaties. By the Treaty of September 29, 1865, proclaimed January 21, 1867 (14 Stat. 687), the Osages sold to the United States approximately 1,000,000 acres of land for which $300,000 was paid and held in trust for the Tribe. Other lands were ceded to the United States, to be held in trust and sold for the benefit of the Tribe. By the Act of July 15, 1870 (c. 296, 16 Stat. 335), provision was made for the removal of the Tribe from Kansas to the Indian Territory. The Act of March 3, 1873 (c. 228, 17 Stat. 590, 598), made available from tribal funds $1,650,600 to pay the Cherokee Indians for lands in Oklahoma for an Osage reservation. Various Acts made provision for per capita payments and for distribution of interest on the tribal funds.

The Acts of 1906 and 1912, *infra*, were passed pursuant to the policy of gradual emancipation evidenced by the earlier Treaties and Acts. The later Acts of 1921, 1925, and 1929, *infra*, are in part included in this appendix for reference.

The Act of 1906 made provision for the allotment to the individual Indians of all of the tribal lands, with unimportant exceptions. Three allotments were made to each enrolled member of the tribe, one being the homestead and the others designated as "surplus" lands. The remaining lands were to be divided among the members and were also designated as surplus lands. The homestead was made inalienable and nontaxable until otherwise provided by Congress. The surplus lands were inalienable for twenty-five years and nontaxable for a period of three years from the approval of the Act when allotted to Indians not holding certificates of competency. The Secretary of the Interior was authorized, in his discretion and at the request and upon the petition of any adult member of the Tribe, to issue to such member a certificate of competency authorizing him to sell and convey any of his lands other than homestead (which remained inalienable and nontaxable for twenty-five years or during the life of the allottee) if upon investigation, consideration, and examination of the request he should find the member fully competent and capable of transacting his own business and caring for his own individual affairs. Upon the issuance of a certificate of competency the surplus lands of such member became immediately subject to taxation, and the member was given the right to manage, control, and dispose of his lands the same as any citizen of the United States. The minerals.

underlying the allotted lands were reserved to the use of the Tribe for a period of twenty-five years. Mineral leases were to be made by the tribal council with the approval of the Secretary of the Interior, and the President of the United States was to determine the amount of royalties to be paid. The royalties, together with certain other tribal income, were to be distributed quarterly to the individual members of the Tribe, without restriction upon its use by them.

The Act of 1906 made no distinction in the distribution of royalties as between Indians having certificates of competency and those without such certificates. No control over the distributed funds was reserved by the Government as to either class. By Section 7 of the Act of 1912 it was provided that the "lands or funds of Osage tribal members" should not be "subject to any claim against the same arising prior to grant of a certificate of competency," and that the Act should not be construed so as to exempt any such property from liability for taxes. Although Section 4 of the Act of 1912 provides that nothing in the Act should be construed to change the right of the Osage Tribe in, or change or amend the provisions of the Act of 1906 in regard to oil, gas, coal, or minerals, it may be that Section 7 should be construed to apply to royalties so as to extend its protection to royalty shares of members not certified as competent, while exposing the royalty shares of those members who were certified as competent to all claims arising after such certification, to that extent restricting the former and emancipating the latter with respect to royalties as well as other tribal funds.

No further change was made in the law until the Act of 1921. That Act and the later one of 1925, while subsequent to the taxable period involved in this action, confirm the view that by the Acts of 1906 and 1912 Congress intended to completely emancipate the certificate-holding Indian with respect to the quarterly royalty payments. The Act of 1921 made no change as to distribution of the royalties to members holding certificates of competency, but by Section 4 it limited the payments to other members to $1,000 per quarter. The Act of 1925 again made no change as to certificate-holding members, but by Section 4 provided that if the Secretary of the Interior should find that one having more than one-half Indian blood was squandering or misusing his funds, his certificate might be revoked after notice and hearing, and thereafter his income should be subject to supervision and investment as provided in the Act for members not holding certificates. It is important to note, however, that the Indian's complete emancipation as to these particular funds while holding a certificate of competency was affirmed by the further provision in Section 4 recognizing the legality of transactions made and providing for the payment of indebtedness incurred prior to revocation. The status of an Indian holding a certificate of competency was not changed by the Act of 1929 except that under Section 3 thereof the Secretary of the Interior was required to pay to each enrolled Indian of less than one-half Osage blood one-fifth part of his proportionate share of accumulated funds and to pay the balance to such Indian on or before the expiration of ten years from the approval of the Act and to issue to him a cer-

tificate of competency. To this extent the discretion vested in the Secretary of the Interior by Section 5 of the Act of 1912 was modified.

As pointed out above, no distinction was made between the two classes of Indians in the Act of 1906 so far as the quarterly royalty payments were concerned, nor was any change made in the Act of 1912, unless the provision in Section 7 be construed to refer to royalties. By the Act of 1921, however, the status of the Indian not holding a certificate of competency was materially altered. Under Section 4 the quarterly distribution was limited to $1,000, to be paid under the supervision of the Superintendent of the Osage Agency, who was directed to invest in certain securities the remainder of such Indian's share after paying all his taxes. Section 1 of the Act of 1925 modified the above requirements by providing that if the Indian not holding a certificate so desired he might receive his entire income without supervision, subject to having restored the $1,000 limitation if the Secretary of the Interior should find that he was wasting or squandering his income. Section 6 of the Act also provided that thereafter no contract for debt with such an Indian should be valid unless approved by the Secretary of the Interior.

With the passage of the Act of 1908, after eighty years of training in schools, the manual arts, and agriculture provided for in various Acts and treaties, the process of educating the individual Indians in responsibility and their emancipation from the guardianship of the Government was continued and expanded. The evident purpose of the Act was to give to all members of the Tribe an op-

portunity to learn self-control through the responsibility of handling the funds distributed to them quarterly, and a still greater responsibility as to the allotted realty was given those Indians found to be fully competent to manage their own affairs. While it was found necessary later to resume control to some extent over the funds of the Indian to whom no certificate of competency had been issued, no change was made as to the competent Indian so long as he held his certificate; and so far as the funds here sought to be taxed are concerned, the petitioner was fully emancipated and no longer a ward of the Government.

APPENDIX B

Act of June 28, 1906, c. 3572, 34 Stat. 539:

CHAP. 3572. An Act For the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes.

* * * * *

SEC. 2. That all lands belonging to the Osage tribe of Indians in Oklahoma Territory, except as herein provided, shall be divided among the members of said tribe, giving to each his or her fair share therof in acres, as follows:

* * * * *

Fourth. After each member has selected his or her second selection of one hundred and sixty acres of land as herein provided, he or she shall be permitted to make a third selection of one hundred and sixty acres of land in the manner herein provided for the first and second selections: *Provided*, That all selections herein provided for shall conform to the existing public surveys in tracts of not less than forty acres, or a legal subdivision of a less amount, designated a "lot." Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable until otherwise provided by Act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and

shall be inalienable for twenty-five years, except as hereinafter provided.

Fifth. After each member has selected his or her first, second, and third selections of one hundred and sixty acres of land, as herein provided, the remaining lands of said tribe in Oklahoma Territory, except as herein provided, shall be divided as equally as practicable among said members by a commission to be appointed to supervise the selection and division of said Osage lands.

* * * * *

Seventh. That the Secretary of the Interior, in his discretion, at the request and upon the petition of any adult member of the tribe, may issue to such member a certificate of competency, authorizing him to sell and convey any of the lands deeded him by reason of this Act, except his homestead, which shall remain inalienable and nontaxable for a period of twenty-five years, or during the life of the homestead allottee, if upon investigation, consideration, and examination of the request he shall find any such member fully competent and capable of transacting his or her own business and caring for his or her own individual affairs: *Provided,* That upon the issuance of such certificate of competency the lands of such member (except his or her homestead) shall become subject to taxation, and such member, except as herein provided, shall have the right to manage, control, and dispose of his or her lands the same as any citizen of the United States: *Provided,* That the surplus lands shall be nontaxable for the period of three years from the approval of this Act, except where certificates of competency are issued or in case of the death of the allottee, unless otherwise provided by Congress: *And*

provided further, That nothing herein shall authorize the sale of the oil, gas, coal, or other minerals covered by said lands, said minerals being reserved to the use of the tribe for a period of twenty-five years, and the royalty to be paid to said tribe as hereinafter provided: *And provided further*, That the oil, gas, coal, and other minerals upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years, unless otherwise provided for by Act of Congress.

* * * * * *

SEC. 3. That the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made are hereby reserved to the Osage tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six; and leases for all oil, gas, and other minerals, covered by selections and division of land herein provided for, may be made by the Osage tribe of Indians through its tribal council, and with the approval of the Secretary of the Interior, and under such rules and regulations as he may prescribe: *Provided*, That the royalties to be paid to the Osage tribe under any mineral lease so made shall be determined by the President of the United States: *And provided further*, That no mining of or prospecting for any of said mineral or minerals shall be permitted on the homestead selections herein provided for without the written consent of the Secretary of the Interior: *Provided, however*, That nothing herein contained shall be construed as affecting any valid existing lease or contract.

SEC. 4. That all funds belonging to the Osage tribe, and all moneys due, and all

moneys that may become due, or may hereafter be found to be due the said Osage tribe of Indians, shall be held in trust by the United States for the period of twenty-five years from and after the first day of January, nineteen hundred and seven, except as herein provided:

First. That all the funds of the Osage tribe of Indians, and all the moneys now due or that may hereafter be found to be due to the said Osage tribe of Indians, and all moneys that may be received from the sale of their lands in Kansas under existing laws, and all moneys found to be due to said Osage tribe of Indians on claims against the United States, after all proper expenses are paid, shall be segregated as soon after January first, nineteen hundred and seven, as is practicable and placed to the credit of the individual members of the said Osage tribe on a basis of a pro rata division among the members of said tribe, as shown by the authorized roll of membership as herein provided for, or to their heirs as hereinafter provided, said credit to draw interest as now authorized by law; and the interest that may accrue thereon shall be paid quarterly to the members entitled thereto, except in the case of minors, in which case the interest shall be paid quarterly to the parents until said minor arrives at the age of twenty-one years: *Provided*, That if the Commissioner of Indian Affairs becomes satisfied that the said interest of any minor is being misused or squandered he may withhold the payment of such interest: *And provided further*, That said interest of minors whose parents are deceased shall be paid to their legal guardians, as above provided.

Second. That the royalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided, and all moneys received from the sale of town lots, together with the buildings thereon, and all moneys received from the sale of the three reservations of one hundred and sixty acres each heretofore reserved for dwelling purposes, and all moneys received from grazing lands, shall be placed in the Treasury of the United States to the credit of the members of the Osage tribe of Indians as other moneys of said tribe are to be deposited under the provisions of this act, and the same shall be distributed to the individual members of said Osage tribe according to the roll provided for herein, in the manner and at the same time that payments are made of interest on other moneys held in trust for the Osages by the United States, except as herein provided.

Third. There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School and for other schools on the Osage Indian Reservation conducted or to be established and conducted for the education of Osage children.

Fourth. There shall be set aside and reserved from the royalties received from oil, gas, coal, or other mineral leases and moneys received from the sale of town lots, and rents from grazing lands not to exceed thirty thousand dollars per annum for agency purposes and an emergency fund for the Osage tribe, which shall be paid out from time to time, upon the requisition of the Osage tribal council, with the approval of the Secretary of the Interior.

SEC. 5. That at the expiration of the period of twenty-five years from and after the first day of January, nineteen hundred and seven, the lands, mineral interests, and moneys herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands shall be issued to said members, or to their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided, and said members shall have full control of said lands, moneys, and mineral interests, except as hereinbefore provided.

SEC. 6. That the lands, moneys, and mineral interest, herein provided for, of any deceased member of the Osage tribe shall descend to his or her legal heirs, according to the laws of the Territory of Oklahoma, or of the State in which said reservation may be hereinafter incorporated, except where the decedent leaves no issue, nor husband nor wife, in which case said lands, moneys, and mineral interests must go to the mother and father equally.

SEC. 7. That the lands herein provided for are set aside for the sole use and benefit of the individual members of the tribe entitled thereto, or to their heirs, as herein provided; and said members, or their heirs, shall have the right to use and to lease said lands for farming, grazing, or any other purpose not otherwise specifically provided for herein, and said members shall have full control of the same, including the proceeds thereof: *Provided*, That parents of minor members of the tribe shall have the control and use of said minors' lands, together with

the proceeds of the same, until said minors arrive at their majority: *And provided further,* That all leases given on said lands for the benefit of the individual members of the tribe entitled thereto, or for their heirs, shall be subject only to the approval of the Secretary of the Interior.

Approved, June 28, 1906.

APPENDIX C

Act of April 18, 1912, c. 83, 37 Stat. 86:

CHAP. 83. An Act Supplementary to and amendatory of the Act entitled "An Act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma," approved June twenty-eighth, nineteen hundred and six, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That until the inherited lands of the deceased members of the Osage Tribe of Indians shall be partitioned or sold the Secretary of the Interior be, and he hereby is, authorized to pay the taxes on said land out of any money due and payable to the heirs from the segregated decedent's funds in the Treasury of the United States.

SEC. 2. That the Secretary of the Interior be, and he hereby is, authorized, where the same would be to the best interests of Osage allottees, and the same is submitted to the Osage council for recommendation and approved by it, to permit the exchange of surplus allotments, or any portions thereof, of Osage allottees under such rules and regulations as he may prescribe and upon such terms as he shall approve. The Secretary shall have authority to do any and all things necessary to make these exchanges effective.

* * * * *

SEC. 4. That nothing herein shall be construed as in any way changing the rights of

the Osage Tribe in oil, gas, coal, and other minerals as fixed in the Osage Act of June twenty-eighth, nineteen hundred and six, or in any manner be construed to change or amend the provisions of said Act in regard to oil, gas, coal, or other minerals.

SEC. 5. That the Secretary of the Interior, in his discretion, hereby is authorized, under rules and regulations to be prescribed by him and upon application therefor, to pay to Osage allottees, including the blind, insane, crippled, aged, or helpless, all or part of the funds in the Treasury of the United States to their individual credit: *Provided*, That he shall be first satisfied of the competency of the allottee or that the release of said individual trust funds would be to the manifest best interests and welfare of the allottee: *Provided further*, That no trust funds of a minor or a person above mentioned who is incompetent shall be released and paid over except to a guardian of such person duly appointed by the proper court and after the filing by such guardian and approval by the court of a sufficient bond conditioned to faithfully administer the funds released and the avails thereof.

* * * * *

SEC. 7. That the lands allotted to members of the Osage tribe shall not in any manner whatsoever be encumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency, or removal of restrictions on alienation; nor shall the lands or funds of Osage tribal members be subject to any claim against the same arising prior to grant of a certificate of competency. That no lands or moneys inherited from Osage allottees shall be sub-

ject to or be taken or sold to secure the payment of any indebtedness incurred by such heir prior to the time such lands and moneys are turned over to such heirs: *Provided, however,* That inherited moneys shall be liable for funeral expenses and expenses of last illness of deceased Osage allottees, to be paid upon order of the county court of Osage County, State of Oklahoma: *Provided further,* That nothing herein shall be construed so as to exempt any such property from liability for taxes.

SEC. 8. That any adult member of the Osage Tribe of Indians not mentally incompetent may dispose of any or all of his estate, real, personal, or mixed, including trust funds, from which restrictions as to alienation have not been removed, by will, in accordance with the laws of the State of Oklahoma: *Provided,* That no such will shall be admitted to probate or have any validity unless approved before or after the death of the testator by the Secretary of the Interior.

SEC. 9. The word "competent," as used in this Act, shall mean a person to whom a certificate has been issued authorizing alienation of all the lands comprising his allotment, except his homestead.

* * * * *

Approved, April 18, 1912.

APPENDIX D

Act of March 3, 1921, c. 120, 41 Stat. 1249:

CHAP. 120. An Act To amend section 3 of the Act of Congress of June 28, 1906, entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the Act of June 28, 1906 (Thirty-fourth Statutes at Large, page 539), entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes," which reserves to the Osage Tribe the oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals covered by said lands are reserved to the Osage Tribe for the period ending April 7, 1946: *Provided,* That all valid existing oil and gas leases on the 7th day of April, 1931, are hereby renewed upon the same terms and extended, subject to all other conditions and provisions thereof, until the 8th day of April, 1946, and as long thereafter as oil or gas is found in paying quantities, and the Secretary of the Interior and the Osage Council are hereby authorized and directed to offer for lease for oil and gas purposes all of the remaining portion of the unleased Osage land prior to April 8, 1931, offering the same annually at the rate of not less than one-tenth of the unleased area.

SEC. 2. That the bona fide owner or lessee of the surface of the land shall be compensated, under rules and regulations prescribed by the Secretary of the Interior in connection with oil and gas-mining operations, for any damage that shall accrue after the passage of this Act as a result of the use of such land for oil and gas mining purposes or out of damages to the land or crops thereon occasioned thereby, but nothing herein contained shall be construed to deny to the surface owner or lessee the right to appeal to the courts without the consent of the Secretary of the Interior, in the event he is dissatisfied with the amount of damages awarded him.

SEC. 3. That all members of the Osage Tribe of Indians are hereby declared to be citizens of the United States, but this shall not affect their interest in tribal property or the control of the United States over such property as is now or may hereafter be provided by law, and all restrictions against alienation of their allotment selections, both surplus and homestead, of all adult Osage Indians of less than one-half Indian blood, are hereby removed, and the Secretary of the Interior shall, within four months after the passage of this Act, determine what members of said tribe are of less than one-half Indian blood, and their ages, and his determination thereof shall be final and conclusive. The homestead allotments of the members of the Osage Tribe shall not be subject to taxation if held by the original allottee prior to April 8, 1931.

SEC. 4. That from and after the passage of this Act the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe having a certificate of com-

petency his or her pro rata share, either as a member of the tribe or heir of a deceased member, of the interest on trust funds, the bonus received from the sale of leases, and the royalties received during the previous fiscal quarter, and so long as the income is sufficient to pay to the adult members of said tribe not having a certificate of competency $1,000 quarterly except where incompetent adult members have legal guardians, in which case the income of such incompetents shall be paid to their legal guardians, and to pay for maintenance and education to the parents or natural guardians or legal guardians actually having minor members under twenty-one years of age personally in charge $500 quarterly out of the income of said minors all of said quarterly payments to legal guardians and adults, not having certificates of competency to be paid under the supervision of the Superintendent of the Osage Agency, and to invest the remainder after paying all the taxes of such members either in United States bonds or in Oklahoma State, county, or school bonds, or place the same on time deposits at interest in banks in the State of Oklahoma for the benefit of each individual member under such rules and regulations as the Secretary of the Interior may prescribe: *Provided,* That at the beginning of each fiscal year there shall first be reserved and set aside out of the Osage tribal funds available for that purpose a sufficient amount of money for the expenditures authorized by Congress out of the Osage funds for that fiscal year: *Provided further,* That all just existing individual obligations of adults not having certificates of competency outstanding upon the passage of this Act, when approved by the Superintendent of the Osage

Agency, shall be paid out of the money of such individual as the same may be placed to his credit in addition to the quarterly allowance provided for herein.

SEC. 5. That the State of Oklahoma is authorized from and after the passage of this Act to levy and collect a gross-production tax upon all oil and gas produced in Osage County, Oklahoma, and all taxes so collected shall be paid and distributed, and in lieu of all other State and county taxes levied upon the production of oil and gas as provided by the laws of Oklahoma, the Secretary of the Interior is hereby authorized and directed to pay, through the proper officers of the Osage Agency, to the State of Oklahoma, from the amount received by the Osage Tribe of Indians as royalties from production of oil and gas, the per centum levied as gross production tax, to be distributed as provided by the laws of Oklahoma: *Provided*, That the Secretary of the Interior is hereby authorized and directed to pay, through the proper officers of the Osage Agency, to Osage County, Oklahoma, an additional sum equal to 1 per centum of the amount received by the Osage Tribe of Indians as royalties from production of oil and gas, which sum shall be used by said county only for the construction and maintenance of roads and bridges therein: *Provided further*, That the proper officials of Osage County shall make an annual report to the Secretary of the Interior showing that said fund has been used for road and bridge construction and maintenance only.

Approved March 3, 1921.

APPENDIX E

Act of February 27, 1925, c. 359, 43 Stat. 1008:

CHAP. 359. An Act To amend the Act of Congress of March 3, 1921, entitled "An Act to amend section 3 of the Act of Congress of June 28, 1906, entitled 'An Act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes.'"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall cause to be paid at the end of each fiscal quarter to each adult member of the Osage Tribe of Indians in Oklahoma having a certificate of competency, his or her pro rata share, either as a member of the tribe or heir or devisee of a deceased member, of the interest on trust funds, the bonus received from the sale of oil or gas leases, the royalties therefrom, and any other moneys due such Indian received during each fiscal quarter, including all moneys received prior to the passage of this Act and remaining unpaid; and so long as the accumulated income is sufficient the Secretary of the Interior shall cause to be paid to the adult members of said tribe not having a certificate of competency $1,000 quarterly, except where such adult members have legal guardians, in which case the amounts provided for herein may be paid to the legal guardian or direct to such Indian in the discretion of the Secretary of the Interior the

total amounts of such payments, however, shall not exceed $1,000 quarterly except as hereinafter provided; and shall cause to be paid for the maintenance and education, to either one of the parents or legal guardians actually having personally in charge, enrolled or unenrolled, minor member under twenty-one years of age, and above eighteen years of age, $1,000 quarterly out of the income of each of said minors, and out of the income of minors under eighteen years of age, $500 quarterly, and so long as the accumulated income of the parent or parents of a minor who has no income or whose income is less than $500 per quarter is sufficient, shall cause to be paid to either of said parents having the care and custody of such minor $500 quarterly, or such proportion thereof as the income of such minor may be less than $500, in addition to the allowances above provided for such parents. Rentals due such adult members from their lands and their minor children's lands and all income from such adults' investments shall be paid to them in addition to the allowance above provided. All payments to legal guardians of Osage Indians shall be expended subject to the joint approval in writing of the court and the superintendent of the Osage Agency. All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the superintendent of the Osage Agency: *Provided*, That if an adult member, not having a certificate of competency so desires, his entire income accumulating in the future from the sources herein specified may be paid to him without supervision, unless the Secre-

tary of the Interior shall find, after notice and hearing, that such member is wasting or squandering his income, in which event the Secretary of the Interior shall pay to such member only the amounts herein before specified to be paid to adult members not having certificates of competency. The Secretary of the Interior shall invest the remainder, after paying the taxes of such members, in United States bonds, Oklahoma State bonds, real estate, first mortgage real estate loans not to exceed 50 per centum of the appraised value of such real estate, and where the member is a resident of Oklahoma such investment shall be in loans on Oklahoma real estate, stock in Oklahoma building and loan associations, livestock, or deposit the same in banks in Oklahoma, or expend the same for the benefit of such member, such expenditures, investments, and deposits to be made under such restrictions, rules, and regulations as he may prescribe: *Provided*, That the Secretary of the Interior shall not make any investment for an adult member without first securing the approval of such member of such investment: *Provided further*, That at the beginning of each fiscal year there shall first be reserved and set aside, out of Osage tribal funds available for that purpose, a sufficient amount of money for the expenditures authorized by Congress out of Osage funds for that fiscal year. No guardian shall be appointed except on the written application or approval of the Secretary of the Interior for the estate of a member of the Osage Tribe of Indians who does not have a certificate of competency or who is of one-half or more Indian blood. * * *

* * * * * *

SEC. 3. Lands devised to members of the Osage Tribe of one-half or more Indian blood or who do not have certificates of competency, under wills approved by the Secretary of the Interior, and lands inherited by such Indians, shall be inalienable unless such lands be conveyed with the approval of the Secretary of the Interior. Property of Osage Indians not having certificates of competency purchased as hereinbefore set forth shall not be subject to the lien of any debt, claim, or judgment except taxes, or be subject to alienation, without the approval of the Secretary of the Interior.

SEC. 4. Whenever the Secretary of the Interior shall find that any member of the Osage Tribe of more than one-half Indian blood, to whom has been granted a certificate of competency, is squandering or misusing his or her funds, he may revoke such certificate of competency after notice and hearing in accordance with such rules and regulations as he may prescribe, and thereafter the income of such member shall be subject to supervision and investment as herein provided for members not having certificates of competency to the same extent as if a certificate of competency had never been granted: *Provided*, That all just indebtedness of such member existing at the time his certificate of competency is revoked shall be paid by the Secretary of the Interior, or his authorized representative, out of the income of such member, in addition to the quarterly income hereinbefore provided for: *And provided further*, That such revocation or cancellation of any certificate of competency shall not affect the legality of any transactions theretofore made by reason of the issuance of any certificate of competency.

* * * * *

SEC. 6. No contract for debt hereafter made with a member of the Osage Tribe of Indians not having a certificate of competency, shall have any validity, unless approved by the Secretary of the Interior. In addition to the payment of funds heretofore authorized, the Secretary of the Interior is hereby authorized in his discretion to pay, out of the funds of a member of the Osage Tribe not having a certificate of competency, any indebtedness heretofore or hereafter incurred by such member by reason of his unlawful acts of carelessness or negligence.

SEC. 7. Hereafter none but heirs of Indian blood shall inherit from those who are of one-half or more Indian blood of the Osage Tribe of Indians any right, title, or interest to any restricted lands, moneys, or mineral interests of the Osage Tribe: *Provided*, That this section shall not apply to spouses under existing marriages.

Approved, February 27, 1925.

APPENDIX F

Act of March 2, 1929, c. 493, 45 Stat. 1478:

CHAP. 493. An Act Relating to the tribal and individual affairs of the Osage Indians of Oklahoma.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of Congress of March 3, 1921 (Forty-first Statutes at Large, page 1249, relating to the Osage Indians of Oklahoma, be, and the same is hereby, amended to read as follows:

"That all that part of the Act of June 28, 1906 (Thirty-fourth Statutes at Large, page 539), entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes,' which reserves to the Osage Tribe the oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals, covered by said lands are reserved to the Osage Tribe, until the 8th day of April, 1958, unless otherwise provided by Act of Congress, and all royalties and bonuses arising therefrom shall belong to the Osage Tribe of Indians, and shall be disbursed to members of the Osage Tribe or their heirs or assigns as now provided by law, after reserving such amounts as are now or may hereafter be authorized by Congress for specific purposes.

"The lands, moneys, and other properties now or hereafter held in trust or under the supervision of the United States for the Osage Tribe of Indians, the members thereof, or their heirs and assigns, shall continue subject to such trust and supervision until January 1, 1959, unless otherwise provided by Act of Congress.

"The Secretary of the Interior and the Osage tribal council are hereby authorized and directed to offer for lease for oil, gas, and other mining purposes any unleased portion of said land in such quantities and at such times as may be deemed for the best interest of the Osage Tribe of Indians: *Provided*, That not less than twenty-five thousand acres shall be offered for lease for oil and gas mining purposes during any one year: *Provided further*, That as to all lands hereafter leased, the regulations governing same and the leases issued thereon shall contain appropriate provisions for the conservation of the natural gas for its economic use, to the end that the highest percentage of ultimate recovery of both oil and gas may be secured: *Provided, however*, That nothing herein contained shall be construed as affecting any valid existing lease for oil or gas or other minerals, but all such leases shall continue as long as gas, oil, or other minerals are found in paying quantities.

"Homestead allotments of Osage Indians not having a certificate of competency shall remain exempt from taxation while the title remains in the original allottee of one-half or more of Osage Indian blood and in his unallotted heirs or devisees of one-half or more of Osage Indian blood until January 1, 1959: *Provided*, That the tax-exempt land of any such Indian allotee, heir, or devisee

shall not at any time exceed one hundred and sixty acres."

* * * * *

SEC. 3. That section 1 of the Act of Congress of February 27, 1925 (Forty-third Statutes at Large, page 1008), is hereby amended by adding thereto the following:

"The Secretary of the Interior be, and is hereby, authorized, in his discretion, under such rules and regulations as he may prescribe, upon application of any member of the Osage Tribe of Indians not having a certificate of competency, to pay all or any part of the funds held in trust for such Indian: *Provided,* That the Secretary of the Interior shall, within one year after this Act is approved, pay to each enrolled Indian of less than half Osage blood, one-fifth part of his or her proportionate share of accumulated funds. And such Secretary shall on or before the expiration of ten years from the date of the approval of this Act, advance and pay over to such Osage Indians of less than one-half Osage Indian blood, all of the balance appearing to his credit of accumulated funds, and shall issue to such Indian a certificate of competency: *And provided further,* That nothing herein contained shall be construed to interfere in any way with the removal by the Secretary of the Interior of restrictions from and against any Osage Indian at any time."

* * * * *

SEC. 5. The restrictions concerning lands and funds of allotted Osage Indians, as provided in this Act and all prior Acts now in force, shall apply to unallotted Osage Indians born since July 1, 1907, or after the passage of this Act, and to their heirs of Osage Indian blood, except that the provisions of

section 6 of the Act of Congress approved February 27, 1925, with reference to the validity of contracts for debt, shall not apply to any allotted or unallotted Osage Indian of less than one-half degree Indian blood: *Provided*, That the Osage lands and funds and any other property which has heretofore or which may hereafter be held in trust or under supervision of the United States for such Osage Indians of less than one-half degree Indian blood not having a certificate of competency shall not be subject to forced sale to satisfy any debt or obligation contracted or incurred prior to the issuance of a certificate of competency: *Provided further*, That the Secretary of the Interior is hereby authorized in his discretion to grant a certificate of competency to any unallotted Osage Indian when in the judgment of the said Secretary such member is fully competent and capable of transacting his or her own affairs.

SEC. 6. All just existing obligations of restricted Osage Indians outstanding January 1, 1929, when approved by the Superintendent of the Osage Agency, shall be paid out of the money of such Indian appearing to his credit, in addition to his quarterly allowances: *And provided further*, That nothing herein contained shall be construed to interfere in any way with the granting of a certificate of competency by the Secretary of the Interior, as provided for by existing law, at any time after the payment of all of his or her just debts which have been presented to and approved by the Superintendent of the Osage Indian Agency.

* * * * *

Approved, March 2, 1929.

APPENDIX G

The Osage Allotment Act of 1906 made no provision for the payment to the individual Indian, competent or otherwise, of any portion of the trust fund derived chiefly from the sale of the Kansas lands and covered by Section 4, First, of that Act. Under Section 5 of the Act of 1912 the Secretary of the Interior was authorized in his discretion and under such rules and regulations as he might prescribe to pay to Osage allottees their pro rata share of such trust fund. On June 26, 1912, the Secretary of the Interior issued rules and regulations relative to the paying over of these trust funds, the material portions of which are as follows:

Regulations for Applications for Osage Funds

(Under sec. 5 of the act of Apr. 18, 1912 (37 Stat. L., 88), Public No. 125)

* * * * *

In order to put into effect the provisions of the aforesaid section 5 the following rules and regulations governing applications for moneys, original and inherited, segregated under the Osage act of June 28, 1906 (34 Stat. L., 539), and proceeds of sale of inherited lands paid into the Treasury under section 6 of the Osage act of April 18, 1912, are hereby set forth:

Payment in full or in part of any application under section 5 is entirely discretionary with the Secretary of the Interior, under rules and regulations prescribed by him. The facts in each case will be investigated and reported upon by Government officers, and the services of any person in the capacity of attorney or agent are entirely unnecessary.

CLASS 1. COMPETENT INDIANS

PREPARATION OF APPLICATION

The applicant (unless an absentee) must be over the age of 21 years and must make his request in person to the superintendent or one of his representatives, giving the reasons for applying, and stating whether a part or all the money to his credit is desired, and whether he has been induced by any person to make the application. The superintendent will prepare a claim for the Indian's signature, which signature must be witnessed by an employee of the office or sworn to before the superintendent. The statement of the Indian will then be incorporated in the superintendent's report and recommendation in a space provided for that purpose.

PROOF OF COMPETENCY

Any Indian who has received a certificate of competency will be considered prima facie competent to handle his trust funds, but further investigation may be made in any case.

One who has not received a certificate of competency, but who has made good use of all moneys paid to him and has properly used the lands and rentals under his control belonging to his minor children may be considered competent to handle his trust funds.

CLASS 2. ADULTS NEITHER AGED, PHYSICALLY DISABLED, NOR INCOMPETENT TO A DEGREE REQUIRING LEGAL GUARDIANSHIP

MAKING OF APPLICATION

The applicant (unless an absentee) must make his request in person to the superintendent or one of his representatives, giving

the reason why it is made and agreeing to abide by a stipulation in the claim that the money is to be deposited in bank to his credit and expended under the supervision of the superintendent, subject to instructions from the Indian Office, if the Secretary of the Interior so directs.

His statement will be incorporated in the superintendent's report on his application, which application will contain the stipulation referred to.

The superintendent will show in his report whether it would be for the best interests and welfare of the allottee to approve an application for all or any part of his trust funds.

* * * * * * *

Each application will contain a clause stipulating that the Indian, so far as that particular application is concerned, will abide by the decision of the department if a part only of the amount applied for be allowed. The attention of each applicant will be called to this stipulation.

Approved, June 26, 1912.

R. G. VALENTINE,
Commissioner.

SAMUEL ADAMS,
First Assistant Secretary.

It will be noted under the foregoing regulations that the moneys were paid over to the Indian having a certificate of competency, or one considered competent to handle his trust funds, without any restrictions as to supervision over expenditure. As to the second class, including adult Indians without certificates of competency who were not considered competent to handle their trust funds but who were not aged, physically disabled, or in-

competent to a degree requiring legal guardianship, the moneys paid over were required to be deposited in a bank to their credit and expended under the supervision of the superintendent of the Agency.

The general authority for supervision and control by the Government over the expenditure of funds belonging to individual unemancipated Indians is found in the various statutes. Typical of such statutory authority is the right to supervise expenditures of the proceeds of the sale of allotted restricted lands of incompetent Indians under the Act of March 1, 1907, c. 2285, 34 Stat. 1018, U. S. C., Title 25, Section 405; of funds of the mentally or physically incapable under Section 2, Act of March 2, 1907, c. 2523, 34 Stat. 1221, as amended by Act of May 18, 1916, c. 125, 39 Stat. 128, U. S. C., Title 25, Section 121; of proceeds from sale of allotted lands of minors or other incompetent Indians under Section 1, Act of May 29, 1908, c. 216, 35 Stat. 444, U. S. C., Title 25, Section 404; of proceeds of lease of allotments held under trust patents, and proceeds of sale of timber cut from allotted restricted lands under Sections 4 and 8, respectively, of the Act of June 25, 1910, c. 431, 36 Stat. 856, 857, U. S. C., Title 25, Sections 403, 406. See also *Starr* v. *Campbell*, 208 U. S. 527; *Parker* v. *Richard*, 250 U. S. 235; *United States* v. *Brown* (C. C. A. 8th), 8 F. (2d) 564, certiorari denied, 270 U. S. 644; *Tomkins* v. *Campbell*, 129 Wis. 93.

Regulations were issued by the office of Indian Affairs from time to time, with the approval of the Secretary of the Interior, relative to the supervision of the expenditure of individual Indian moneys. The regulations of April 1, 1904, in effect

at the time of the passage of the Osage Allotment Act of 1906, were as follows:

> 301. Moneys coming into the hands of agents for rents, leases, and sales of property belonging to individual Indians will be designated as "individual Indian moneys." They are not to be covered into the United States Treasury, but accounted for as other funds, and paid, upon proper vouchers, directly to the Indians to whom they belong. (*See sec. 348.*)
>
> 348. Under the act of July 1, 1898, which provides that Indian agents "shall account for all moneys coming into their hands as custodians from any source whatever, and be responsible therefor under their official bonds," such agents are required to include in their regular accounts moneys received from the sale of property belonging to Indians, and to furnish proper vouchers for all disbursements therefrom. (*Dig. Dec. Comp., p. 12. See sec. 301.*)
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> * * * * * *
>
> 355. A properly executed voucher must be furnished for each and every expenditure, and the latter must be authorized by the Secretary of the Interior before credit therefor will be allowed.

Under the foregoing the Indian agent had the custody of individual Indian moneys and paid them out directly to the Indians upon vouchers which could only be issued for expenditures authorized by the Secretary of the Interior.

Under the Act of April 30, 1908, c. 153, 35 Stat. 73, U. S. C., Title 25, Section 151, Indian agents were authorized to deposit individual Indian moneys in national banks furnishing approved security. In 1910 under Section 1 of the Act of June

25, 1910, *supra*, U. S. C., Title 25, Section 372, such authority was extended to include banks other than national banks. Subsequently the regulations concerning the handling of individual Indian moneys were considerably amplified, and those approved on July 14, 1913, with the amendments thereto, were in effect during the taxable period involved in this case. Under these regulations individual Indian moneys were deposited in the banks to the credit of the individual Indian, subject to his check, which also had to be signed and approved by the Indian agent. The pertinent provisions of such regulations were as follows:

REGULATIONS GOVERNING THE HANDLING OF INDIVIDUAL INDIAN MONEY

GENERAL

1. Individual Indian moneys are funds, regardless of derivation, which belong to individual Indians, and which come into the custody of a disbursing officer.

2. Requests for authority to approve checks of Indians who have individual Indian money deposited to their credit shall be made upon Form 5–139, in duplicate, carefully prepared for approval by the Commissioner of Indian Affairs, except that the date of approval and the number are to be left blank. All requests for authority must show clearly the necessity for the expenditure proposed, and, where it is proposed to pay direct to depositor for his unrestricted use, the competency of the depositor to handle the amount requested.

* * * * *

5. (A) Disbursing officers are hereby authorized to turn over $100 or less without

restriction to adult Indians, who are reasonably competent. Payments under this authority are not to exceed $100 in any one month nor $500 in any one year, this section to be cited as authority for all such disbursements. The purpose of such distribution to adult Indians who are not incapacitated on account of age or physical or mental infirmity is to the end that they may be encouraged to assume personal responsibility, and acquire self-reliance and a practical business experience that will enable them to become more independent and progressive members of the community. (Amended September 24, 1921.)

5. (B) Authority is hereby granted disbursing officers handling individual Indian money to turn over to any Indian, upon the issuance of a patent in fee to said Indian, all individual Indian money on deposit to his or her credit, and to assist in obtaining, as speedily as possible, payment of said Indian's share of tribal trust funds which may be held in the Treasury of the United States. (Effective March 25, 1918.)

6. Attention of superintendents is called to the fact that one of their chief duties is to see that every Indian is well established in a permanent and substantial home built upon land to which the individual whose money is being expended may ultimately expect to obtain a fee-simple title, that is to say, upon his own allotment or land to which he has been declared sole heir by the Secretary of the Interior under the act of June 25, 1910.

* * * * *

9. Superintendents are authorized to make expenditures from accounts of adult Indians for all agricultural needs, including seed and stock, under the authority of this

section. Expenditures under this section shall be reported in quarterly accounts, and this section referred to as authority for the expenditure. (Amended March 6, 1915.)

9. (A) All emergency needs of adult Indians not provided for in other sections of these regulations may be met by the superintendent without procuring specific authority. Expenditures under this section shall be reported in the quarterly accounts and this section referred to as the authority for the expenditure. (Amended July 3, 1916.)

9. (B) Superintendents are authorized to expend funds of adult depositors for use in constructing, repairing and equipping houses, barns, out-buildings, fences, corrals, wells, and other similar necessary improvements when placed upon their allotments. Expenditures under this section shall be reported in the quarterly accounts, and this section referred to as the authority for the expenditure. (Effective March 6, 1915.)

* * * * * * *

13. A disbursing officer may pay in cash to a minor or his parent, custodian, or guardian, or disburse for the benefit of a minor who is in regular attendance in a public mission, contract, government reservation, boarding, or day school, sums not greater than $25 in any one month, the aggregate of checks and payments for any one year not to exceed $100. No funds belonging to minors who are not in regular attendance at school shall be paid to them or their parents, custodians, or guardians, or disbursed for their benefit, except under approved authority on Form 5–139, in accordance with paragraph 2. (Amended March 11, 1914.)

* * * * * * *

18. Persons who extend credit to Indians do so at their own risk. All Indians should be urged to pay any of their just and legitimate debts as far as they may be able.

* * * * *

39. All checks must show on the face thereof the purpose for which drawn. For example, if a direct payment is made, it should be noted on the check as "Cash payment," or if expenditures are made for the benefit of the Indian, the following notation should appear: "Seed and implements, supervised," "Groceries, clothing, etc., supervised," or "Doctor and hospital treatment," "Payment principals of loan," etc.

* * * * *

42. Individual Indian moneys, whether or not deposited in bank to owner's credit, are in the officer's custody. (See par. 1.)

43. At no time will officers cover individual Indian moneys into the Treasury, unless specifically directed to do so.

* * * * *

105. Deposits in bank to the credit of individual Indians may be made either subject to check countersigned by the officer or for a definite time, accordingly as the Indian's circumstances make the more desirable.

* * * * *

July 12, 1913.

CATO SELLS, *Commissioner.*

July 14, 1913.

A. A. JONES,
First Assistant Secretary.

APPENDIX H

Internal Revenue Cumulative Bulletin II-2, p. 62:

ARTICLE 31: WHAT INCLUDED IN GROSS INCOME.

(Also Section 219, Article 345; Section 223, Article 401; Section 225, Article 422)

II-33-1192
I. T. 1834

REVENUE ACTS OF 1916, 1917, 1918, AND 1921

All gains, profits, and income accruing to the members of the Osage Tribe, Oklahoma, from their surplus allotments and from their shares as members in the mineral estate reserved to the tribe are subject to the income taxes imposed by the Revenue Acts of 1916, 1917, 1918, and 1921. The income accruing to such Indians from homestead allotments conveyed to them by the Act of 1906 will not be subject to income taxation prior to April 8, 1931, if such homestead is held by the original allottees.

The income accruing to the United States as trustee is distributable regularly within the meaning of section 2(b) of the Revenue Act of 1916 (which is applicable to the taxable years 1916 and 1917) and is distributable periodically within the meaning of sections 219(a)4 of the Revenue Acts of 1918 and 1921. Taxes to be asserted are to be computed upon the individual share of

each member of the tribe. Since the shares of the members having certificates of competency are paid to them without restriction, they should include such income in the individual returns filed by them. With respect to those persons who do not have certificates of competency and minors, a return of the entire shares of such persons should be made by the United States as guardian.

The following questions have been presented for consideration:

(1) Is the income accruing to Indians of the Osage Tribe, Oklahoma, derived from "restricted" property subject to the income tax levied by the Internal Revenue Acts of 1916, 1917, 1918, and 1921?

(2) If so, should the Osage Tribe as a unit, rather than individual allottees thereof, file a separate tax return in order to take advantage of authorized allowances or deductions for depletion and depreciation on oil and gas wells?

The various Revenue Acts referred to above impose the income tax levied thereunder upon the entire net income (as defined in such Acts) of every individual a citizen or resident of the United States. See section 1 of the Revenue Act of 1916, sections 1 and 2 of the Revenue Act of 1917, and sections 210 and 211 of the Revenue Acts of 1918 and 1921. The members of the Osage Tribe of Indians of Oklahoma, whether or not owning restricted property, come within the purview of the language used therein. Indians as such are not exempted from liability under the provisions of the general revenue laws. *The Cherokee Tobacco* (11 Wall. 616). The members of the Osage Tribe are, therefore, subject to the taxes

mentioned, unless there is some special provision under the terms of which such taxes are not to be asserted against them.

In the Act of June 28, 1906 (34 Stat. 539), which provided for the allotment in severalty of the lands formerly constituting the reservation of the Osage Tribe, now Osage County, Okla., distinct provisions are to be found with respect to the taxation of the lands so allotted. The Act referred to provided for the conveyance to each of the several members of the tribe of three selections of 160 acres each and provided also for an equal division of any lands which might remain after such selections. Each member was permitted to designate which of his three selections should be a homestead. The other selections of the member, together with his share of the remaining lands to be divided, were designated as surplus lands. Pursuant to the provisions of the Act, the homestead allotment was made inalienable and nontaxable until otherwise directed by Congress, unless the Secretary of the Interior should, upon application of a member, issue to him a certificate of competency, as provided for in such Act, in which case the homestead allotment of such member was made inalienable and nontaxable for a period of 25 years or during the life of such person. By section 3 of the Act of March 3, 1921 (41 Stat. 1249), the restriction against the alienation of the homestead allotments of all members of less than one-half Indian blood were removed. It was further provided that the homestead allotments of *all the members* of the Osage Tribe should not be subject to taxation, if held by the original allottee, prior to April 8, 1931. With respect to the surplus lands, the Act of June 28, 1906, provided that all such

lands, to the extent of the interest therein conveyed to the Osage allottees, should be taxable at the expiration of three years from the date of the approval of the Act (notwithstanding a restriction against the alienation thereof for a period of 25 years or until the issuance of a certificate of competency) unless prior to the expiration of such three years a member should receive a certificate of competency or a member should die, in either of which cases the surplus lands of such member should become taxable upon the happening of such event.

In accordance with the express provisions of the legislation of Congress, the homestead allotment, to the extent of the interest therein conveyed to each member of the Osage Tribe by the Act of 1906, is nontaxable if held by the original allottee until April 8, 1931. A tax upon the income from such interest in the land would be equivalent to a tax upon the interest itself. See *Pollock* v. *Farmers Loan & Trust Co.* (157 U. S. 429). Accordingly, until April 8, 1931, income accruing to members of the Osage Tribe from the homestead allotments conveyed to them by the Act of 1906 is not taxable, if such homestead is held by the original allottee. The surplus allotment of any such members became taxable upon the expiration of three years from the date of the approval of the Act of 1906 (June 28, 1906), provided a certificate of competency was not issued to such member prior thereto or such member did not die before the expiration of such period. It may be stated, therefore, that the surplus lands of the Osage Indians became taxable not later than June 28, 1909. The income derived from the surplus lands is taxable under the Revenue Acts in ques-

tion, since Congress has expressly provided that such lands would in any event be taxable at the expiration of three years from June 28, 1906.

The oil, gas, coal, and other minerals underlying the alloted lands of the Osage Tribe were, by sections 3 and 5 of the Act of 1906, reserved to the Osage Tribe for a period of 25 years from April 8, 1906. It was provided that at the expiration of such period of 25 years such minerals or the rights thereto should become the property of the individual owners of the land, unless prior to the expiration of such period Congress should otherwise direct. By the Act of March 3, 1921, such minerals or the rights thereto were further reserved to the tribe for an additional period of 15 years, the reservation being made to end April 7, 1946.

By reason of the reservation described, the minerals contained in the allotments did not pass by the allotment to the individual members of the Osage Tribe. See *Board of Commissioners* v. *United States* (216 Fed. 883). Such interest remained tribal property and the title of the Indians thereto remained in the tribe as is the case where property is held by an Indian tribe for the common use and equal benefit of all the members. See *Cherokee Nation* v. *Hitchcock* (187 U. S. 294, 307). The tax exemptions provided for in the case of homestead and surplus-land allotments do not appear to have any application to the oil, gas, coal, and other minerals underlying the allotted lands, and there appears to be no other statutory provision which would exempt such minerals from taxation. The Act of March 3, 1921, permitted the State of Oklahoma to levy its gross-production tax upon all oil and

gas produced in Osage County. By the same Act Congress made an additional levy of a sum equal to 1 per centum of the amount rereceived by the Osage Tribe as royalties from the production of oil and gas, such levy to be used for the construction and maintenance of roads and bridges in Osage County. These instances are indicative of the power of Congress to subject such tribal property to taxation.

As stated before, Indians as such are not exempt from liability under the provisions of the general revenue laws of the United States. If they are to be exempted from such liability there must be special language in such general revenue laws excepting them. (*The Cherokee Tobacco, supra.*) Since, therefore, Congress, having plenary power over Indian affairs, has made no provisions whereby the reserved mineral estate of the Osage Tribe shall be excepted from taxation by the Federal Government, since Congress has not excepted the members of the Osage Tribe from liability under the income-tax provisions of the various revenue Acts in question, and since such persons clearly come within the general classes of persons upon which such taxes are imposed, it accordingly appears that it was the intention of Congress that any income accruing to the members of the Osage Tribe from minerals underlying allotted lands would be subject to the provisions of the various revenue Acts.

It is therefore held that all gains, profits, and income accruing to the members of the Osage Tribe, Oklahoma, from their surplus allotments and from their shares as members in the mineral estate reserved to the tribe are subject to the income taxes imposed by

the Revenue Acts of 1916, 1917, 1918, and 1921. The income accruing to such Indians from homestead allotments conveyed to them by the Act of 1906 will not be subject to income taxation prior to April 8, 1931, if such homestead is held by the original allottee.

By reason of section 4 of the Act of 1906, all funds then belonging to the Osage Tribe and all moneys due and to become due to the tribe were directed to be held in trust by the United States for a period of 25 years from and after January 1, 1907. It was directed that such funds should be segregated into individual shares as soon after January 1, 1907, as practicable and placed to the credit of the individual members of the tribe or their heirs at interest and that such interest should be paid quarterly to such members or their heirs. In respect, however, of all moneys received from oil, gas, coal, and other minerals, from the sale of town lots, and from grazing lands, it was directed that the amount placed to the individual credit of the members should be paid to such members quarterly in the same manner as the interest on their moneys held in trust for the tribe, thus treating such receipts as distributable income. It was provided that at the end of 25 years the pro rata share of the members in all the funds of the tribe so placed to the individual credit of such members should be distributed to them. It will thus be noted that a distribution of all the Osage trust funds was directed to be made by the Act of 1906 and that the United States was made the trustee of the pro rata share of such individual member or his heirs. It will thus be seen that all the moneys constituting the corpus of the Osage trust has been distributed to the individual

members by the placing of the same to the individual credit of such members. The tribal title remains only as to the reserved mineral interest. As noted above, the income therefrom is distributable quarterly to the individual members. Section 4 of the Act of March 3, 1921, modified slightly the procedure as to the handling of the income from the mineral interest and from the trust funds in that the Secretary of the Interior was directed to retain and invest so much of the income of the members not having certificates of competency as exceeded $1,000 quarterly and so much of the income of minors as exceeded $500 quarterly. The United States is, therefore, made trustee of the mineral interest for the tribe as a body, the income thereof being distributable to the individual members of the tribe quarterly and payable to them at such time with the exceptions indicated. The United States is also trustee for the individual members of the tribe for their pro rata shares of the funds directed to be held in trust for 25 years, the interest upon which is distributable quarterly, and payable at such time, except as otherwise indicated.

The income of such a trust is distributable regularly within the meaning of section 2(b) of the Revenue Act of 1916 (which is applicable to the taxable years 1916 and 1917) and is distributable periodically within the meaning of sections 219(a)4 of the Revenue Acts of 1918 and 1921. Taxes to be asserted are, therefore, to be computed upon the individual share of each member of the tribe. Since the shares of the members having certificates of competency are paid to them without restriction, they should include such income in the individual re-

turns filed by them. With respect to those persons who do not have certificates of competency and minors, a return of the entire shares of such persons should be made by the United States as guardian.

U. S. GOVERNMENT PRINTING OFFICE: 1931